

REMARKS

Claims 13 and 20 were pending at the time of the Office action.

Claim Rejections – 35 USC §102

Examiner's Rejection

The Examiner has previously rejected claims 13 and 20 under 35 USC §102(e) as being anticipated by Kenyon (U.S. Patent Application Publication 2002/0023020 A1).

The Examiner has now rejected the Applicant's declaration under 37 C.F.R. §1.131 made to swear behind and overcome the rejection. The Examiner states that the evidence in support of the declaration that was attached to the declaration as Exhibit A (first page of a patent search request) and Exhibit B (first two pages of a patentability opinion) must disclose actual dates. The Examiner also states that the declaration does not state where the invention was conceived.

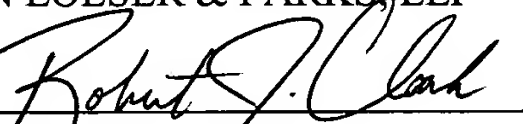
The dates of Exhibit A and B are now provided in the 37 C.F.R. §1.131 declaration. In addition, a statement that conception was made in Poland a WTO country has been added to the declaration. A declaration has also been made by the practitioner that reasonable diligence was taken in constructive reduction to practice of the invention from a date prior to September 21, 1999 to filing of the provisional application on October 7, 1999.

Accordingly, the Applicant respectfully requests that the rejection is removed and that, in view of the arguments set forth above, prompt reconsideration and allowance of the claims is earnestly requested.

Respectfully submitted,

HAHN LOESER & PARKS, LLP

By



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/680,172
Applicant : Remi Swierczek
Filed : October 5, 2000
TC/A.U. : 3625
Examiner : Matthew S. Gart

Confirmation No. 8130

Docket No. : 5713-2
Customer No. : 021324

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION UNDER 37 C.F.R. §1.131 TO ESTABLISH COMPLETION OF THE
INVENTION OF THIS APPLICATION IN THE UNITED STATES AT A DATE PRIOR
TO SEPTEMBER 21, 1999**

I, Remi Swierczek, declare:

(1) That I am the inventor in the instant United States Patent Application Serial No. 09/680,172, filed October 5, 2000, and that I have read the specification including the claims of this application and are familiar with the contents thereof.

(2) That I have read U.S. Patent Publication No. US 2002/0023020 A1 to Kenyon (hereinafter "Kenyon"), having a filing date of July 13, 2001, and claiming priority through a chain of patent applications beginning with provisional application No. 60/155,064, filed on September 21, 1999, and am familiar with the contents the Kenyon application.

(3) That, appended to this Declaration, is Exhibit A as identified below:

Exhibit A - Copy of a letter **dated April 27, 1999** authorizing a search on the Music Identification System from Mark A. Watkins of the firm of Oldham & Oldham Co., L.P.A. (now Hahn Loeser & Parks, LLP) which substantially describes the present invention in the second paragraph of the letter.

(4) That, appended to this Declaration, is Exhibit B as identified below:

Exhibit B - Copy of a Patentability / Search Report **dated May 20, 1999** for Music Identification System from Mark A. Watkins of the firm of Oldham & Oldham Co., L.P.A. (now Hahn Loeser & Parks, LLP) which substantially describes the present invention in the third paragraph of the report.

(5) That the instant application provides a music identification system and method.

(6) That the invention concept described in Exhibits A and B describes the music identification system substantially as described and claimed in the instant application.

(7) That the **invention concept described in Exhibits A and B and claimed in the instant application was conceived in Poland (a WTO member since 1995) sometime in the second half of 1998.**

(8) That the invention as described and claimed in the instant application was conceived prior to September 21, 1999, as evidenced by Exhibits A and B.

(9) That the invention substantially as described and claimed in the instant application was constructively reduced to practice shortly thereafter with the filing of provisional application 60/158,087 on October 7, 1999, and 60/186,565 on March 2, 2000.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the U.S.C. and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

10/14/04
Date


Remi Swierczek



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DECLARATION UNDER 37 C.F.R. §1.131

I, Robert J. Clark, declare:

- (1) That I am the practitioner in the instant United States Patent Application Serial No. 09/680,172, filed October 5, 2000, which claims the benefit of United States Provisional Patent Application 60/158,087, filed October 7, 1999.
- (2) That shortly after May 20, 1999, I worked with the Mark Watkins (Reg. No. 33,813) and the Inventor Remi Swierczek to draft a provisional patent application which was eventually filed on October 7, 1999 as United States Provisional Patent Application 60/158,087.
- (3) That the time period between September 21, 1999 and October 7, 1999 is exactly two weeks.
- (4) That from May 20, 1999 until October 7, 1999, reasonable diligence was exercised to achieve a constructive reduction to practice of the invention.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements

were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the U.S.C. and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Nov. 4, 2004
Date

Robert J. Clark
Robert J. Clark